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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2081

WES ARVIN ROCERO  
4405 Miller Creek Court  
Stockton CA 95219

**A C C U S A T I O N**

Respiratory Care Practitioner License No. 19520

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 18, 1997, the Respiratory Care Board issued Respiratory Care Practitioner License Number 19520 to Wes Arvin Rocero (Respondent). The Respiratory Care Practitioner License expired on February 28, 2005, and has not been renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1                   4.       Section 3710 of the Code states: “The Respiratory Care Board of  
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
3 8.3, the Respiratory Care Practice Act].”

4                   5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
5 and revoke licenses to practice respiratory care as provided in this chapter.”

6                   6.       Section 118, subdivision (b), of the Code provides that the suspension,  
7 expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to  
8 proceed with a disciplinary action during the period within which the license may be renewed,  
9 restored, reissued or reinstated.

10                  7.       Section 3750 of the Code states:

11                   “The board may order the denial, suspension or revocation of, or the imposition of  
12 probationary conditions upon, a license issued under this chapter, for any of the following  
13 causes:

14                   “(d) Conviction of a crime that substantially relates to the qualifications,  
15 functions, or duties of a respiratory care practitioner. The record of conviction or a  
16 certified copy thereof shall be conclusive evidence of the conviction.

17                   “(g) Conviction of a violation of any of the provisions of this chapter or of any  
18 provision of Division 2 (commencing with Section 500), or violating, or attempting to  
19 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to  
20 violate any provision or term of this chapter or of any provision of Division 2  
21 (commencing with Section 500).”

22                  8.       Section 3750.5 of the Code states:

23                   “In addition to any other grounds specified in this chapter, the board may deny,  
24 suspend, or revoke the license of any applicant or license holder who has done any of the  
25 following:

26                   “(a) Obtained or possessed in violation of law, or except as directed by a licensed  
27 physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or  
28 administered to another, any controlled substances as defined in Division 10 (commencing with

1 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2  
2 (commencing with section 4015) of Chapter 9.

3 "(b) Used any controlled substance as defined in Division 10 (commencing with  
4 Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 2  
5 (commencing with section 4015) of Chapter 9.

6 "(d) Been convicted of a criminal offense involving the consumption or  
7 self-administration of any of the substances described in subdivisions (a) and (b), or the  
8 possession of, or falsification of a record pertaining to, the substances described in subdivision  
9 (a), in which event the record of the conviction is conclusive evidence thereof.

10 "(e) Been committed or confined by a court of competent jurisdiction for  
11 intemperate use of or addiction to the use of any of the substances described in subdivisions (a),  
12 (b), and (c) in which event the court order of commitment or confinement is prima facie evidence  
13 of that commitment or confinement.

14 9. Section 3752 of the Code states:

15 "A plea or verdict of guilty or a conviction following a plea of nolo contendere  
16 made to a charge of any offense which substantially relates to the qualifications,  
17 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
18 the meaning of this article. The board shall order the license suspended or revoked, or  
19 may decline to issue a license, when the time for appeal has elapsed, or the judgment of  
20 conviction has been affirmed on appeal or when an order granting probation is made  
21 suspending the imposition of sentence, irrespective of a subsequent order under Section  
22 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
23 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
24 accusation, information, or indictment."

25 10. California Code of Regulations, title 16, section 1399.370, states:

26 "For the purposes of denial, suspension, or revocation of a license, a crime or act  
27 shall be considered to be substantially related to the qualifications, functions or duties of  
28 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to

1 perform the functions authorized by his or her license or in a manner inconsistent with the  
2 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
3 those involving the following:

4 “(a) Violating or attempting to violate, directly or indirectly, or assisting or  
5 abetting the violation of or conspiring to violate any provision or term of the Act.

6 11. Section 492 of the Code states:

7 “Notwithstanding any other provision of law, successful completion of any diversion  
8 program under the Penal Code, or successful completion of an alcohol and drug problem  
9 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
10 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
11 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in  
12 that division, from taking disciplinary action against a licensee or from denying a license for  
13 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
14 record pertaining to an arrest.

15 “This section shall not be construed to apply to any drug diversion program  
16 operated by any agency established under Division 2 (commencing with Section 500) of this  
17 code, or any initiative act referred to in that division.”

#### 18 COST RECOVERY

19 12. Section 3753.5, subdivision (a) of the Code states:

20 "In any order issued in resolution of a disciplinary proceeding before the board,  
21 the board or the administrative law judge may direct any practitioner or applicant found to have  
22 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
23 investigation and prosecution of the case."

24 13. Section 3753.7 of the Code states:

25 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
26 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
27 administrative, filing, and service fees."

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1                   14.     Section 3753.1 of the Code states:

2                   "(a) An administrative disciplinary decision imposing terms of probation may  
3 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
4 associated with monitoring the probation. "

5                                   FIRST CAUSE FOR DISCIPLINE

6                                   (Possession and Use/Under the Influence of a controlled substance)

7                   15.     Respondent is subject to disciplinary action under Business & Professions  
8 code section 3750.5(a) [possession of a controlled substance] and 3750.5(b) [use of a controlled  
9 substance] in that he was under the influence of methamphetamine, a controlled substance, on  
10 two occasions. The circumstances are as follows:

11   October 15, 2006 arrest

12                   16.     On or about October 15, 2006, respondent was arrested for vandalizing his  
13 mother's apartment. Stockton Police Officer Anthony Perry investigated the incident, and  
14 observed a glass pipe commonly used to smoke methamphetamine in the living room of the  
15 apartment. Respondent was arrested for violating Penal Code sections 594(b) (1), a felony,  
16 vandalism of \$400.00 or more, 148(a)(1), obstruct or resist a public officer and Health & Safety  
17 Code section 11364, possession of a smoking device. Prior to being booked into county jail,  
18 respondent admitted that he had smoked "about 35 to 40 dollars worth of meth." Pursuant to  
19 Health and Safety Code section 11055, Methamphetamine is a Schedule II controlled substance,  
20 and Respondent did not have a medical doctor's prescription for it.

21   January 25, 2007 arrest

22                   17.     On or about January 25, 2007, respondent was arrested for vandalizing his  
23 mother's apartment. Stockton Police Officer Trak Keo arrested respondent for violating Penal  
24 Code section 594(b)(1), vandalism of property valued at more than \$400.00. Respondent  
25 admitted that he had used "about \$20.00 of crystal meth" that morning about 11:00 a.m., and said  
26 that he was angry at his mother for not giving him \$20.00. He stated that he wanted the money to  
27 buy more "crystal meth."

28     ///

1                   18.     Therefore, respondent's license is subject to discipline in that on two  
2 occasions, he admitted he possessed and used methamphetamine, a controlled substance, in  
3 violation of code sections 3750.5(a) and 3750.5 (b).

4                                   SECOND CAUSE FOR DISCIPLINE

5   (Conviction)

6                   19.     Paragraphs 16 through 17 are incorporated herein.

7                   20.     Respondent is subject to disciplinary action under sections 3750.5(d),  
8 3750.5(e), 3750(d) and 3752 in that he was convicted of substantially related crimes involving  
9 the use of controlled substances.

10   November 7, 2006

11                   21.     On or about October 17, 2006, a criminal complaint titled *People of the*  
12 *State of California v. Wesley Arvin Rocero*, case no. SM 253624A was filed in Superior Court,  
13 San Joaquin County. Count 1 charged respondent with a misdemeanor violation of Penal Code  
14 section 594(b) (1), vandalism damage under \$400.00. Count 2 charged respondent with a  
15 misdemeanor violation of Penal Code section 148, resisting a public officer. Count 3 charged  
16 respondent with a misdemeanor violation of Health & Safety Code section 11364, possession of  
17 paraphernalia used for smoking a controlled substance.

18                   22.     On or about November 7, 2006, respondent entered a plea of no contest to  
19 Count 2, Penal Code section 148, resisting a public officer and Count 3, Health & Safety Code  
20 section 11364, possession of paraphernalia used for smoking a controlled substance.

21                   23.     On or about November 7, 2006, the Court granted conditional probation  
22 for three years as to count 2 and sentenced him as follows: he was ordered to serve 180 days in  
23 jail and 180 days were suspended; he was ordered to pay fines, and he was granted deferred entry  
24 of judgment, which ordered him to enroll in the San Joaquin Safety Council, a three month, 32  
25 hour counseling and education program for drug abuse, within fifteen days. Judgment was  
26 deferred for 18 months to a maximum of 3 years. The Probation Department was ordered to file  
27 a report after 18 months and before 3 years.

28     ///

January 29, 2007 conviction

24. On or about January 29, 2007, a criminal complaint titled *People of the State of California vs. Wes Arvin Rocero*, case no. SM255483A was filed in Superior Court, San Joaquin County. Count 1 charged respondent with a violation of Penal Code section 594(A), vandalism. On or about January 29, 2007, respondent entered a plea of no contest to the charge. The court accepted the plea and sentenced respondent as follows: three years conditional probation, pay fines, serve five days in jail with credit for time served on five days. He was ordered to make restitution.

25. Therefore, Respondent is subject to disciplinary action under sections 3750.5(d), 3750.5(e), 3750(d), and 3752 in that he was convicted of substantially related crimes involving the use of controlled substances and ordered to attend a drug abuse program.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 19520, issued to Wes Arvin Rocero;

2. Ordering Wes Arvin Rocero to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: June 6, 2007

Original signed by Christine Molina for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant